

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JOSE ARREDONDO, ADAM M.
CARRAZCO and MAYRA PARTIDA, d/b/a
MAYRA PARTIDA,

Appellants,

v.

WASHINGTON STATE DEPARTMENT OF
LABOR & INDUSTRIES,

Respondent.

No. 38398-5-II

UNPUBLISHED OPINION

Bridgewater, J. — We are asked to decide the narrow question of whether the superior court properly dismissed a partnership’s contest of Industrial Insurance premiums it owed to the Department of Labor and Industries (the Department), when the partnership paid no part, even a reduced part, of the taxes, penalties, and interest before contesting the amount it owed. We hold that the superior court did not abuse its discretion in its decision that, while one partner provided evidence of inability to pay, the partnership as a whole did not meet the totality of the undue hardship exception to RCW 51.52.112, which would have allowed the partnership to proceed

without posting any amount it owed. We affirm.

FACTS

Mayra Partida, Adam Carrazo, and Jose Arredondo were partners in a business (the Firm) that installed drywall in housing developments. Partida owned 70 percent of the Firm, and Carrazo and Arredondo each owned 15 percent.

The Department audited the Firm to determine whether it had correctly paid Industrial Insurance premiums. The Department's audit concluded that the Firm had not reported all hours that its employees had worked, which resulted in the Firm underpaying its insurance premiums. In response, the Department assessed the Firm approximately \$37,500 in premiums, penalties, and interest.

The Firm unsuccessfully challenged the Department's assessment, first to the Department and then to the Board of Industrial Insurance Appeals (the Board). The Firm next appealed the Board's decision to the superior court, but it failed to pay, as RCW 51.52.112 required, the full assessment before bringing the action to superior court. Because the Firm failed to pay as RCW 51.52.112 required, the Department moved to dismiss the appeal.

In response to the motion to dismiss, the Firm argued that RCW 51.52.112 did not require it to pay the assessment because, under a statutory exception, the Firm would suffer an undue hardship in paying the assessment. To support its contention that it would suffer undue hardship in paying the assessment, the Firm relied on Partida's declaration alone.

Partida declared that she had been bedridden with a high-risk pregnancy for five months and had been unable to work during that time. Her inability to work and command a steady

income was further compromised when, due to the economic downturn, the Firm's work largely evaporated. What work remained was only sufficient to pay business and personal expenses, with none leftover to pay the Department. In addition to lacking an income, Partida declared that she did not have any savings or other assets available to pay the amount the Firm owed to the Department.

After considering Partida's declaration and the related briefing, the superior court granted the Department's motion to dismiss, but it also ruled that her declaration "demonstrate[ed] a basis to reduce the total amount claimed by the Department." CP at 28. Accordingly, the superior court gave the Firm approximately one month to pay the Department \$20,000 of the total assessment, at which point the Firm could pursue its appeal. The Firm declined to pay the \$20,000, and the superior court dismissed the case.¹

ANALYSIS

I. Context

RCW 51.52.112 is a single statute within a much larger framework of the Industrial Insurance Act (the Act).² The legislature passed the Act to provide workers and employees who suffer an injury on the job with certain, speedy, and adequate relief. RCW 51.04.010. To provide for such relief to qualifying workers and employees, the Act requires the employer subject to the

¹ Aside from the superior court's conditional order to dismiss, the record does not include a subsequent order confirming that the Firm failed to pay what the superior court required. Nevertheless, the Firm timely appealed the superior court's order to dismiss, thus, the only logical conclusion is that the Firm never paid the amount that the superior court required.

² Title 51 RCW.

Act either to pay into a state fund insurance scheme or to qualify as a self-insurer. RCW 51.14.010. If an employer insures its employees' relief with the state fund, the Act requires that employer to pay certain premiums, which are set according to the degree of occupational hazard.³ RCW 51.16.035. The Act defines those premiums as a tax, RCW 51.08.015, and if an employer insured with the State fails or refuses to pay those taxes due, the Department has the authority to collect them. RCW 51.16.155. Along with collecting the taxes due, the Department can also assess penalties and interest. RCW 51.48.210. Once the Department determines the amount of taxes, penalties, and interest, it provides the employer with a notice of assessment that certifies the amount due. RCW 51.48.120.

An employer that disagrees with the Department's notice of assessment may appeal to the Board, and, once the employer exhausts its administrative remedies, the employer may further appeal to the superior court. RCW 51.48.131; RCW 51.52.104; .106; .110. But to contest the notice of assessment in superior court, the employer must first satisfy RCW 51.52.112, which states in relevant part:

All taxes, penalties, and interest shall be paid *in full* before any action may be instituted in any court to contest all or any part of such taxes, penalties, or interest *unless* the court determines that there would be an *undue hardship* to the employer.

(Emphasis added). Thus, to satisfy RCW 51.52.112 and appeal to the superior court, the employer must either (1) pay all taxes, penalties, and interest in full or (2) suffer undue hardship in paying them.

³ Every employer that is not a self-insurer must deduct from each of its employees' pay one-half the amount it is required to pay for their medical benefits. RCW 51.16.140.

II. Standard of Review

We must first consider what standard of review applies to a trial court finding of undue hardship under RCW 51.52.112, as no Washington case law or statute establishes a standard. The Department argues that this court should apply abuse of discretion.⁴ We agree.

When case law or statutes do not establish a standard of review, we turn to analogous situations to determine the appropriate standard. *Cf. Cougar Mountain Assocs. v. King County*, 111 Wn.2d 742, 749, 765 P.2d 264 (1988) (standard of review for “analogous” denial of building permit application applied to denial of subdivision application); *Geo Exch. Sys., LLC v. Cam*, 115 Wn. App. 625, 628-629, 65 P.3d 11 (2003) (standard of review of “analogous” trial by affidavit applied to summary proceeding under RCW 60.04.081). Because RCW 51.52.112 requires the Firm to pay “[a]ll taxes, penalties, and interest” before appealing an assessment to superior court, unless the court “determines that there would be an undue hardship to [the Firm],” the Firm’s request for trial court review is best analogized to a request to proceed *in forma pauperis*, or “in the manner of a pauper,” as when a trial court waives filing fees and court costs to an indigent. Black’s Law Dictionary 849 (9th ed. 2009); *e.g.*, *Bullock v. Superior Court for King County*, 84 Wn.2d 101, 104-05, 524 P.2d 385 (1974) (trial court must exercise sound discretion in determining whether each party in a divorce proceeding could pay court costs).

Washington appellate courts review a trial court’s decision to waive court costs for indigent parties for abuse of discretion. *O’Connor v. Matzdorff*, 76 Wn.2d 589, 600, 458 P.2d 154 (1969) (trial courts have inherent power to waive prepayment of statutorily required court

⁴ The Firm does not assert a standard of review.

fees); *Neal v. Wallace*, 15 Wn. App. 506, 508, 550 P.2d 539 (1976) (“Waiver of fees for an indigent is a discretionary act within the inherent power of the court”); see *Bowman v. Waldt*, 9 Wn. App. 562, 570-71, 513 P.2d 559 (1973) (waiver of court filing fees reviewed case-by-case for abuse of discretion). Abuse of discretion is a highly deferential standard that we apply to rulings committed to the trial court’s inherent powers. See *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Examining the nature of judicial discretion, our Supreme Court said:

Judicial discretion is a composite of many things, among which are conclusions drawn from objective criteria; it means a sound judgment exercised with regard to what is right under the circumstances and without doing so arbitrarily or capriciously.

Carroll, 79 Wn.2d at 26. “Properly exercised judicial discretion is a choice, based on reason rather than intuition, from among permissible alternatives.” *State v. Hall*, 35 Wn. App. 302, 311, 666 P.2d 930 (1983). Determining whether a party will suffer undue hardship under RCW 51.52.112 is a choice from among permissible alternatives, a choice that rests with the trial court’s sound discretion; therefore, we review a trial court’s finding of undue hardship for abuse of discretion.

Under the abuse of discretion standard, we will not disturb a trial court’s decision unless the appellant clearly shows that the decision is manifestly unreasonable or is based on untenable grounds or is done for untenable reasons. *Carroll*, 79 Wn.2d at 26. A trial court’s decision is manifestly unreasonable if it is outside the court’s range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the record does not support the

court's factual findings; and, finally, it is based on untenable reasons if the court's decision is based on an incorrect standard or if the facts do not meet the requirements of the correct standard. *State v. Rundquist*, 79 Wn. App. 786, 793, 905 P.2d 922 (1995) (citing Washington State Bar Ass'n, Washington Appellate Practice Deskbook, § 18.5 (2d ed.1993)), *review denied*, 129 Wn.2d 1003 (1996).

III. No Abuse of Discretion

Using the in forma pauperis doctrine, Washington courts have used a four-part test to determine whether a party may be relieved of litigation expenses:

To allow waiver of fees in a civil action, at a minimum, the affidavit accompanying the motion must show “(1) . . . actual, not theoretical, indigency; (2) that but for such waiver a litigant would be unable to maintain the action; (3) that there are no alternative means available for procuring the fees; and (4) that plaintiff's claim is ‘brought in good faith and with probable merit.’”

Neal, 15 Wn. App. at 508-09 (quoting *Bowman*, 9 Wn. App. at 571). Out of three partners, Partida was the only one who submitted a declaration. As partners are liable jointly and severally for all partnership obligations, RCW 25.05.125(1), each partner is responsible for the insurance premiums owed. Nonetheless, based on Partida's declaration of personal health and financial problems, the superior court nearly cut in half the required industrial insurance premium assessment. In the absence of the other partners' affidavits describing their circumstances and insolvency, we cannot say that the Firm suffered undue hardship that would, as required under RCW 51.51.112, warrant an absolute reduction in the insurance premium assessment. When the superior court found some hardship, it exercised, and did not abuse, its discretion. We find no error.⁵

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Bridgewater, J.

We concur:

Armstrong, J.

Penoyar, A.C.J.

⁵ Because the issue in this case is whether the superior court erred in dismissing the Firm's action for failing to pay a reduced amount of insurance premiums, we expressly decline to address whether the superior court had statutory authority to reduce the amount paid under RCW 51.51.112 by an amount less than the full amount. The Firm only asserted that Partida's health and financial problems required the superior court to completely reduce the amount the Firm owed.